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GENERAL MEDIA SYSTEMS, LLC; and  
MIKE MILLER

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

MACKENZIE ANNE THOMA,  
a.k.a. KENZIE ANNE, an  
individual and on behalf of all  
others similarly situated,  
  
Plaintiff,  
  
v.

VXN GROUP LLC, a Delaware  
limited liability company; STRIKE  
3 HOLDINGS, LLC, a Delaware  
limited liability company;  
GENERAL MEDIA SYSTEMS,  
LLC, a Delaware limited liability  
company; MIKE MILLER, an  
individual; and DOES 1 to 100,  
inclusive,  
  
Defendants.

Case No. **2:23-cv-04901 WLH (AGRx)**

**DECLARATION OF BRAD S. KANE  
IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS PLAINTIFF'S  
SECOND AMENDED COMPLAINT**

Date: April 26, 2024  
Time: 1:30 pm or later  
Courtroom: 9B

*[Filed concurrently with Defendants'  
Notice of Motion and Motion to Dismiss  
Plaintiff's Second Amended Complaint;  
[Proposed] Order]*

Complaint Filed: April 20, 2023  
Removed: June 21, 2023

**DECLARATION OF BRAD S. KANE IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

1 I, Brad S. Kane, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the State of California  
3 since 1990, the State of Alaska since 1991 and Washington State since 2003. I am  
4 the owner of the Kane Law Firm (“KLF”), and counsel for Defendants VXN Group  
5 LLC (“VXN”), Strike 3 Holdings, LLC (“Strike 3”), General Media Systems, LLC  
6 (“General Media”), and Mike Miller (“Miller”) (collectively, “Defendants”). I am  
7 personally familiar with, and, if called upon, could and would testify to the facts  
8 contained herein from my personal knowledge.

9 2. On March 7, 2024, pursuant to Local Rule 7-3, I and my senior  
10 associate, Eric Clopper (“Clopper”), thoroughly met and conferred with Plaintiff’s  
11 counsel Sarah Cohen (“Cohen”) and Rafael Yedoyan (“Yedoyan”) on March 7,  
12 2024, regarding the new allegations in Plaintiff’s SAC and the grounds upon which  
13 Defendants would move to dismiss them.

14 3. During our March 7, 2024 meet and confer, the parties discussed at  
15 length Plaintiff’s anticipated new allegations in the SAC based on: (i) the Court’s  
16 February 16, 2024 ruling; and (ii) issues successfully raised in Defendants’ Motion  
17 to Dismiss Plaintiff’s First Amended Complaint.

18 4. Also during our March 7, 2024 meet and confer, both sides discussed  
19 the outstanding pleading issues to be resolved by this Court, including: (i)  
20 Plaintiff’s alter ego allegations; (ii) Plaintiff’s failure to meet the *Landers* standard  
21 to state a minimum wage claim; (iii) Plaintiff’s new claim that she never received  
22 wage statements, which directly contradict allegations in both the Complaint and  
23 the FAC; and (iv) Plaintiff’s failure to plead one example when Defendants refused  
24 to provide a necessary work-related reimbursement pursuant to this Court’s order  
25 dismissing the FAC. Clopper and I were unable to reach any agreements with  
26 Cohen and Yedoyan during this meeting. On March 20, 2024, Clopper emailed  
27  
28

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1 Cohen and Yedoyan to try and meet and confer once more prior to Defendants  
2 filing this motion, but neither Cohen nor Yedoyan responded to Clopper's email.

3 5. Attached as **Exhibit 1** is a true and correct copy of the Complaint  
4 Plaintiff filed against Defendants in Los Angeles Superior Court on July 11, 2023,  
5 under the Private Attorneys' General Act in the Superior Court of California for  
6 the County of Los Angeles, entitled *Mackenzie Anne Thoma, a.k.a. Kenzie Anne v.*  
7 *VXN Group LLC; Strike 3 Holdings, LLC; General Media Systems, LLC; Mike*  
8 *Miller; and DOES 1 through 100, inclusive*, Case No. 23STCV16142.

9 6. Attached as **Exhibit 2** is a true and correct copy of the transcript  
10 prepared by Court Reporter Marea Woolrich of this Court's January 5, 2024  
11 hearing on Defendants' Motion to Dismiss Plaintiff's First Amended Complaint  
12 and Anti-SLAPP motion.

13  
14 I declare under penalty of perjury that the foregoing is true and  
15 correct. Executed on March 22, 2024 at Los Angeles, California.

16  
17 /s/ Brad S. Kane

18 Brad S. Kane  
19  
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Exhibit 1

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
7/11/2023 12:25 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By E. Galicia, Deputy Clerk

**BIBIYAN LAW GROUP, P.C.**

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Attorneys for Plaintiff, MACKENZIE ANNE THOMA,  
as an aggrieved employee, and on behalf of all other  
aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

MACKENZIE ANNE THOMA, a.k.a.  
KENZIE ANNE, as an aggrieved employee,  
and on behalf of all other aggrieved employees  
under the Labor Code Private Attorneys'  
General Act of 2004,

Plaintiff,

v.

VXN GROUP LLC, a Delaware limited  
liability company; STRIKE 3 HOLDINGS,  
LLC, a Delaware limited liability company;  
GENERAL MEDIA SYSTEMS, LLC, a  
Delaware limited liability company; MIKE  
MILLER, an individual; and DOES 1 through  
100, inclusive,

Defendants.

CASE NO.: **23STCV16142**

**REPRESENTATIVE ACTION**

**COMPLAINT UNDER THE LABOR  
CODE PRIVATE ATTORNEYS'  
GENERAL ACT OF 2004 FOR CIVIL  
PENALTIES UNDER LABOR CODE  
SECTIONS 210, 226.3, 226.8, 558, 1174.5,  
1197.1 and 2699**

**DEMAND FOR JURY TRIAL**

[Amount in Controversy Greater Than  
\$25,000.00]

1 Plaintiff MACKENZIE ANNE THOMA, as an aggrieved employee, and on behalf of all  
2 other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, alleges  
3 as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys General  
6 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against VXN GROUP LLC,  
7 ("VXN GROUP"), STRIKE 3 HOLDINGS, LLC ("STRIKE 3"), GENERAL MEDIA SYSTEMS,  
8 LLC ("GENERAL MEDIA") and VXN GROUP's Executive Director, MIKE MILLER  
9 (collectively, "Vixen Media Group"). (collectively, and with DOES 1 through 100, as further  
10 defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the  
11 State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt  
12 employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as  
13 it pertains to the alleged claims for failure to comply with Labor Code section 6409.6, Labor Code  
14 section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 226.8, Labor  
15 Code section 246, *et seq.*, Labor Code section 432, Labor Code section 1198.5, Labor Code section  
16 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees  
17 of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

18 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code  
19 of Civil Procedure section 410.10.

20 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil  
21 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the  
22 causes of action complained of herein arose; the county in which the employment relationship  
23 began; the county in which performance of the employment contract, or part of it, between Plaintiff  
24 and Defendants was due to be performed; the county in which the employment contract, or part of  
25 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,  
26 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff  
27 and Aggrieved Employees in Los Angeles County, and because Defendants employ numerous  
28 Aggrieved Employees in Los Angeles County.

1           4.           Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by  
2 Defendants during the applicable statutory period and suffered one or more of the Labor Code  
3 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil  
4 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code  
5 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus  
6 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former  
7 employees of Defendants during the Civil Penalty Period.

8           5.           Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative  
9 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*  
10 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the  
11 PAGA allegations described herein is not required.

12           6.           During the period beginning one (1) year preceding the provision of notice to the  
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),  
14 Defendants violated, *inter alia*, Labor Code sections 98.6, 201, 202, 203, 204, 210, 226, 226.3,  
15 226.7, 226.8, 227.3, 246, 2802, 432, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198.5, 2699,  
16 2802, 2810.5, 6409.2 among others.

17           7.           Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees  
18 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within  
19 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures  
20 specified in Labor Code section 2699.3.

21           8.           On April 17, 2023, Plaintiff provided written notice pursuant to Labor Code section  
22 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation of  
23 various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by  
24 certified mail, with return receipt requested to Defendants, and each of them.

25           9.           Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not  
26 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)  
27 calendar days of the April 17, 2023 postmarked date of the herein-described notice sent by Plaintiff  
28 to the LWDA and Defendants.

**PAGA REPRESENTATIVE ALLEGATIONS**

10. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, willful misclassification. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, to the detriment of Plaintiff and other Aggrieved Employees.

11. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control. As such, Plaintiff is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Plaintiff and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

12. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted, timely, and complete meal period for days on which the employee worked in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation, by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal



1 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which  
2 employees worked, as required by California wage and hour laws.

3 13. At all relevant times mentioned herein, Defendants had and have a policy or practice  
4 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and  
5 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions  
6 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest  
7 periods all together; requiring that they be bundled together and/or with meal periods; interrupting  
8 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not  
9 providing them in a timely fashion; and not permitting employees to leave the premises; and/or  
10 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

11 14. At all relevant times mentioned herein, Defendants had and have a policy or practice  
12 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish  
13 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross  
14 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable  
15 hourly rates in effect during the pay period and the corresponding number of hours worked at each  
16 hourly rate by the employee; the legal name of the employer and/or the name and address of the  
17 legal entity securing the employer's services if the employer is a farm labor contractor; and other  
18 such information as required by Labor Code section 226, subdivision (a).

19 15. At all relevant times mentioned herein, Defendants had and have a policy or practice  
20 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish  
21 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment  
22 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records  
23 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to  
24 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other  
25 Aggrieved Employees.

26 16. At all relevant times mentioned herein, Defendants had and have a policy or practice  
27 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages  
28 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime

1 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor  
2 Code sections 201, 202, and 203.

3 17. At all relevant times herein, Defendants had and have a policy or practice of failing  
4 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon  
5 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3  
6 and applicable Wage Orders.

7 18. At all relevant times mentioned herein, Defendants have had a policy or practice of  
8 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without  
9 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred, in direct consequence  
10 of the discharge of their duties, or of their obedience to the directions of Defendants, as required by  
11 Labor Code section 2802, and other statutory and common law offenses. As a result, Employer are  
12 liable to reimburse Employee and other aggrieved employees for these costs incurred in furtherance  
13 of work duties. In addition, Defendants would be liable for civil penalties pursuant to Labor Code  
14 sections 558 and 2699.

15 19. At all relevant times mentioned herein, Defendants have had a policy or practice of  
16 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft  
17 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved  
18 Employees with the rates of pay and overtime rates of pay applicable to their employment;  
19 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the  
20 name, address, and telephone number of the workers' compensation insurance carrier; information  
21 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants  
22 under Labor Code section 2810.5.

23 20. At all relevant times mentioned herein, Defendants have had a policy or practice of  
24 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code  
25 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of  
26 any calendar month shall be paid for between the 16th and 26th day of the month during which the  
27 labor was performed, and labor performed between the 16th and the last day, inclusive of any  
28 calendar month, shall be paid for between the 1st and 10th day of the following month."

21. At all relevant times mentioned herein, Defendants had and have a policy or practice of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge and experience they obtained at Defendants for purposes of competing with Defendants, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Defendants and under what circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed and believes that this policy and/or practice violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k).

22. Defendants had and have a policy or practice of preventing Plaintiff and/or other Aggrieved Employees from disclosing violations of state and federal law, either within Defendants to their managers or outside to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5.

23. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

**PARTIES**

### A. Plaintiff

24. Plaintiff Ms. Thoma, a resident of the State of California, is a decorated and well-known adult film actress and model who performs under the stage name “Kenzie Anne”. She has been named “Pet of the Year” by Penthouse magazine and shortly before the filing of this Complaint appeared on the cover of Hustler magazine.

25. Before beginning her acting career, she modeled and participated in photo shoots for various clothing brands and adult magazines, such as Wet Seal, Free People, Carbon38, Playboy Plus, and Eats Channel. In November of 2020, she signed a contract with Defendants, known widely as “Vixen Media Group”, with her entry into the adult film industry occurring on or around April

1 30, 2021. Between November 2020 through approximately September of 2022, Ms. Thoma  
2 performed in Defendants' movies and modeled at their direction.

3 **B. Defendants**

4 26. Plaintiff is informed and believes that defendants VXN GROUP, STRIKE 3, and  
5 GENERAL MEDIA are limited liability companies organized and existing under the laws of the  
6 State of Delaware and doing business in the County of Los Angeles, State of California.

7 27. VIXEN MEDIA GROUP is the creator of adult motion pictures and photographs  
8 distributed for commercial sale through various distribution outlets and platforms. It was founded  
9 in 2014 by French entrepreneur and director Greg Lansky along with partners Steven Matthysen  
10 and Mike Miller with the goal of creating higher-quality videos that would be considered more  
11 "artistic" than the normal realm of adult video content. While Greg Lansky sold his stake in VIXEN  
12 MEDIA GROUP in January of 2020, it still owns and operates at least seven online adult film sites,  
13 including Vixen, Tushy, Blacked, Blacked Raw, Tushy Raw, Deeper and Slayed.

14 28. VIXEN MEDIA GROUP has won many major awards in the adult-film industry, including  
15 an XBIZ Award as recently in 2022 for Studio of the Year.

16 29. Plaintiff is informed and believes and based thereon alleges that defendant MILLER is,  
17 and at all times relevant hereto was, an individual residing in California, as well as a founder,  
18 principal, and the Executive Producer of VXN GROUP, and DOES 1 through 50, as further defined  
19 below. Plaintiff is further informed and believes and based thereon alleges that MILLER violated,  
20 or caused to be violated, the above-referenced and below-referenced Labor Code provisions in  
21 violation of Labor Code section 558.1.

22 30. The true names and capacities, whether individual, corporate, associate, or otherwise, of  
23 defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who  
24 therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.  
25 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated  
26 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.  
27 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of  
28 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is

1 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
2 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
3 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
4 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall  
5 include VNX GROUP, STRIKE 3, GENERAL MEDIA, MILLER, and any of their parent,  
6 subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100  
7 identified herein.

8 **JOINT LIABILITY ALLEGATIONS**

9 31. Plaintiff is informed and believes, and based thereon alleges, that at all times  
10 mentioned herein, each of the defendants was the agent, principal, employee, employer,  
11 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
12 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,  
13 employment, joint venture, and conspiracy.

14 32. All of the acts and conduct described herein of each and every corporate defendant  
15 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
16 employers, and the officers and management-level employees of said corporate employers. In  
17 addition thereto, said corporate employers participated in the aforementioned acts and conduct of  
18 their said employees, agents, and representatives, and each of them; and upon completion of the  
19 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant  
20 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,  
21 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the  
22 aforementioned corporate employees, agents and representatives.

23 33. Plaintiff is informed and believes, and based thereon alleges, that despite the  
24 formation of the purported corporate existence of VNX GROUP, STRIKE 3, GENERAL MEDIA,  
25 MILLER, and DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them,  
26 are one and the same with DOES 51 through 100 (“Individual Defendants”), and each of them, due  
27 to, but not limited to, the following reasons:

28 a. The Alter Ego Defendants are completely dominated and controlled by the

1 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws  
2 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego  
3 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or  
4 inequitable purpose;

5           b. The Individual Defendants derive actual and significant monetary benefits by  
6 and through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego Defendants as  
7 the funding source for the Individual Defendants' own personal expenditures;

8           c. Plaintiff is informed and believes, and thereon alleges, that the Individual  
9 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear  
10 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or  
11 accomplishing some other wrongful or inequitable purpose;

12           d. Plaintiff is informed and believes, and thereon alleges, that the business affairs  
13 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned  
14 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same  
15 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein  
16 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of  
17 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned  
18 herein were, the alter egos of the Individual Defendants;

19           e. The recognition of the separate existence of the Individual Defendants from  
20 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to  
21 insulate themselves from liability to Plaintiff for violations to the Civil Code, Government Code,  
22 and other statutory violations. The corporate existence of these defendants should thus be  
23 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud  
24 and injustice to Plaintiff herein;

25           f. Accordingly, the Alter Ego Defendants constitute the alter ego of the  
26 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be  
27 disregarded.

28       34. As a result of the aforementioned facts, Plaintiff is informed and believes, and based

1 thereon alleges that Defendants, and each of them, are joint employers.

2 **FIRST CAUSE OF ACTION**

3 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

4 35. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the  
5 preceding paragraphs as though fully set forth hereat.

6 **Civil Penalties Under Labor Code § 210**

7 36. At all relevant times herein, Labor Code section 204, requires and required that:  
8 “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup> days, inclusive, of any calendar month shall be paid for  
9 between the 16<sup>th</sup> and 26<sup>th</sup> day of the month during which the labor was performed, and labor  
10 performed between the 16<sup>th</sup> and the last day, inclusive, of any calendar month, shall be paid for  
11 between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month.”

12 37. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated  
13 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this  
14 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,  
15 204, 204b, 204.1, 205, 205.5, shall be subject to a civil penalty as follows: (1) For any initial  
16 violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each  
17 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each  
18 failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

19 38. At all relevant times herein, Defendants have had a consistent policy or practice of  
20 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as  
21 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other  
22 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor  
23 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for  
24 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee  
25 for each subsequent violation in connection with each payment that was made in violation of Labor  
26 Code section 204.

27 **Civil Penalties Under Labor Code § 226.3**

28 39. Defendants had and have a policy or practice of failing to comply with Labor Code



1 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees  
2 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net  
3 wages earned; the name and address of each employer with whom they have been placed to work;  
4 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
5 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal  
6 entity securing the employer's services if the employer is a farm labor contractor; and other such  
7 information as required by Labor Code section 226, subdivision (a).

8 40. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)  
9 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
10 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for  
11 each violation in a subsequent citation, for which the employer fails to provide the employee a wage  
12 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

13 41. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in  
14 this section are in addition to any other penalty provided by law."

15 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants had  
16 and have a policy or practice of failing to furnish non-exempt employees, including, without  
17 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total  
18 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the  
19 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal  
20 name of the employer and/or the name and address of the legal entity securing the employer's  
21 services if the employer is a farm labor contractor; and other such information as required by Labor  
22 Code section 226, subdivision (a).

23 43. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are  
24 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision  
25 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period  
26 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay  
27 period for each subsequent violation.

28 ///



Civil Penalties Under Labor Code § 226.8

44. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

45. Plaintiff is informed and believes that Defendants had and have a policy or practice of failing to comply with Labor Code section 226.8 as Defendants willfully misclassified Plaintiff and other aggrieved employees as independent contractors.

46. Labor Code section 226.8(b) states: “If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

47. Labor Code section 226.8(c) states: “If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.”

48. Thus, pursuant to Labor Code section 226.8, Plaintiff and other Aggrieved Employees she seeks to represent are entitled to recover civil penalties for Defendants’ violation of Labor Code section 226.8, subdivision (a) in the amount specified in Labor Code sections 226.8, subdivisions (b) and (c).

Violation of Labor Code § 558

49. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient

1 to recover underpaid wages;

2 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
3 employee for each pay period for which the employee was underpaid in addition to  
4 an amount sufficient to recover underpaid wages;

5 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

6 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and  
7 each of them, violated, or caused to be violated, the Labor Code sections described herein, including  
8 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime  
9 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the  
10 regular payday designated by employer, the name of the employer, including any “doing business  
11 as” names used, the name, address, and telephone number of the workers’ compensation insurance  
12 carrier, information regarding paid sick leave, and other pertinent information.

13 51. As a direct and proximate result of the herein-described Labor Code violations,  
14 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover  
15 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars  
16 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars  
17 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

18 Violation of Labor Code § 1174.5

19 52. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required  
20 every person employing labor in California to “[a]llow any member of the commission or the  
21 employees of the Division of Labor Standards Enforcement free access to the place of business or  
22 employment of the person to secure any information or make any investigation that they are  
23 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,  
24 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,  
25 or papers of the person.”

26 53. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required  
27 every person employing labor in California to “[k]eep a record showing the names and addresses of  
28 all employees employed and the ages of all minors.”

54. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

55. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

56. Plaintiff is informed and believes, and based thereon alleges, that Defendants have willfully failed to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174.

57. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five hundred dollars (\$500) per violation per Aggrieved Employee.

## Violation of Labor Code § 1197.1

58. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,

1 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to  
2 Section 203 as follows:

3 (1) For any initial violation that is intentionally committed, one hundred dollars  
4 (\$100) for each underpaid employee for each pay period for which the  
5 employee is underpaid. This amount shall be in addition to an amount  
6 sufficient to recover underpaid wages, liquidated damages pursuant to Section  
7 1194.2, and any applicable penalties imposed pursuant to Section 203.

8 (2) For each subsequent violation for the same specific offense, two hundred fifty  
9 dollars (\$250) for each underpaid employee for each pay period for which the  
10 employee is underpaid regardless of whether the initial violation is  
11 intentionally committed. This amount shall be in addition to an amount  
12 sufficient to recover underpaid wages, liquidated damages pursuant to Section  
13 1194.2, and any applicable penalties imposed pursuant to Section 203.

14 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to  
15 Section 203, recovered pursuant to this section shall be paid to the affected  
16 employee.”

17 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused  
18 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without  
19 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all  
20 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to  
21 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of  
22 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at  
23 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,  
24 entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

25 60. As a direct and proximate result of the herein-described Labor Code violations,  
26 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to  
27 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one  
28 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and

1 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each  
2 subsequent violation.

3 Civil Penalties Under Labor Code § 2699

4 61. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other  
5 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed  
6 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or  
7 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil  
8 action brought by an aggrieved employee on behalf of himself or herself and other current or former  
9 employees pursuant to the procedures specified in Labor Code section 2699.3.

10 62. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor  
11 Code except those for which a civil penalty is specifically provided, the established civil penalty for  
12 a violation of those provisions is as follows: if, at the time of the alleged violation, the person  
13 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved  
14 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved  
15 employee per pay period for each subsequent violation.

16 63. Plaintiff is informed and believes, and based thereon alleges that Defendants, and  
17 each of them, violated the Labor Code sections described herein, including, without limitation, for  
18 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,  
19 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the  
20 name of the employer, including “doing business as” names used, the name, address, and telephone  
21 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and  
22 other pertinent information required to be disclosed by Defendants under Labor Code section  
23 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick  
24 leave required to be provided pursuant to California and local laws.

25 64. Moreover, Plaintiff and other Aggrieved Employees within the State of California  
26 whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in  
27 connection with their herein-described claims for civil penalties.

28 ///

**REQUEST FOR JURY TRIAL**

65. Plaintiff hereby requests a trial by jury.

**PRAYER**

**WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for judgment against Defendants as follows:

- A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699;
- B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- C. Pre-judgment and post-judgment interest;
- D. For costs of suit incurred herein; and
- E. Such other and further relief as the Court deems just and proper.

Dated: July 11, 2023

BIBIYAN LAW GROUP, P.C.

BY: /s/ Sarah H. Cohen

DAVID D. BIBIYAN

JEFFREY D. KLEIN

SARAH H. COHEN

Attorneys for Plaintiff MACKENZIE ANNE THOMA, as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004,

Exhibit 2

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UNITED STATES DISTRICT COURT  
  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
  
HONORABLE WESLEY L. HSU, U.S. DISTRICT JUDGE  
  
MACKENZIE ANNE THOMA, a.k.a. )  
KENZIE ANNE, on behalf of herself )  
and all others similarly situated ) CASE NO.  
employees, ) 23-CV-04901-WLH  
)  
Plaintiffs, )  
)  
vs. )  
)  
VXN GROUP LLC, a Delaware limited )  
liability company; STRIKE 3 )  
HOLDINGS, LLC, a Delaware limited )  
liability company; GENERAL MEDIA )  
SYSTEMS, LLC, a Delaware limited )  
liability company; MIKE MILLER, an )  
individual; and DOES 1 to 100, )  
inclusive, )  
)  
Defendants. )  
)

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, JANUARY 5, 2024

10:01 A.M.

LOS ANGELES, CALIFORNIA

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MAREA WOOLRICH, CSR 12698, CCRR  
FEDERAL OFFICIAL COURT REPORTER  
350 WEST FIRST STREET, SUITE 4311  
LOS ANGELES, CALIFORNIA 90012  
mareawoolrich@aol.com



**APPEARANCES OF COUNSEL:**

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**FOR DEFENDANTS:**

KANE LAW FIRM  
By: Brad S. Kane  
By: Eric Clopper  
1154 S. Crescent Heights Boulevard  
Los Angeles, CA 90035  
(323) 697-9840

LOS ANGELES, CALIFORNIA; FRIDAY, JANUARY 5, 2024

10:01 A.M.

-oOo-

THE COURTROOM DEPUTY: Calling Item No. 2,  
LA 23-CV-4901, Mackenzie Anne Thoma versus VXX Group LLC,  
et al.

Counsel, please state appearances starting with  
plaintiff.

MS. COHEN: Good morning. Sarah Cohen appearing on  
behalf of plaintiff.

MR. KANE: Good morning, Your Honor. Brad Kane and  
Eric Clopper appearing on behalf of defendants.

THE COURT: All right. Good morning to all of you.

The matter is on calendar for a motion to dismiss  
and a motion to strike under the Anti-SLAPP statute in  
California state law. We issued late last night a tentative in  
the case which I assume both sides have had the opportunity to  
review. It's my understanding that both sides wish to have  
oral argument anyway.

So Mr. Clopper?

MR. CLOPPER: Yes.

THE COURT: Or Mr. Kane?

MR. KANE: Yes. Thank you, Your Honor.

And thank you for the very well-reasoned tentative

1 ruling. I wanted to just bring a few points to the Court's  
2 attention.

3 With regard to the Anti-SLAPP, we are in sort of the  
4 unique situation where the Anti-SLAPP defendants don't have  
5 direct claims against them. This Court had dismissed the joint  
6 liability allegations from the original Complaint, added  
7 constitutionally protected activities to substantiate those  
8 allegations.

9 And, you know, my reading -- obviously your reading  
10 matters more than mine. But reading *Park* and *Manlin*, if we are  
11 looking at what the wrongdoing is, it would be their  
12 inequitable conduct in controlling these entities from which  
13 their liability would arise. And so I would ask the Court to  
14 take a second look at that to see if it passes muster.

15 Otherwise, we might end up in a situation where you  
16 could never have an Anti-SLAPP against joint liability  
17 allegations because they are not the cause of action  
18 themselves. They are the type of claim, as it were, that  
19 piggybacks on something else. So I'm not sure how you could  
20 get an Anti-SLAPP on those otherwise. That's my first point.

21 The second point, Your Honor, is --

22 THE COURT: I guess -- well, let me stop you for a  
23 second though.

24 MR. KANE: Sure.

25 THE COURT: I'm not 100 percent sure I agree with

1 you because I -- it seems to me that the -- the underlying  
2 conduct -- like setting aside the joint liability issue for a  
3 second. The underlying conduct that's alleged in Amended  
4 Complaint is not, in my view, constitutionally protected  
5 activity.

6 I realize that there's -- in this particular  
7 situation, there's not a clear line because obviously  
8 filmmaking is in and of itself constitutionally protected  
9 activity, and I don't dispute that.

10 But I also don't think that it is so broad that  
11 anything that has to do with the filmmaking also makes it  
12 constitutionally protected activity.

13 And in my view, the specific allegations that are  
14 made in this case are not of the type that go to -- directly to  
15 the filmmaking as opposed to the allegation that they are at  
16 the end of the day employers and that they have obligations as  
17 employers to do certain things and they didn't meet those  
18 requirements.

19 MR. KANE: Well, Your Honor, the reason why VXN  
20 didn't file an Anti-SLAPP is because we agree that payment of  
21 wages is not in the constitutionally protected -- even if it's  
22 making film.

23 THE COURT: Right.

24 MR. KANE: We agree with that. That law is clear  
25 there. The question becomes narrower when someone else who

1 didn't -- isn't their direct employer, you know, and their only  
2 involvement is filmmaking. Do -- are they entitled to  
3 constitutional protection or protection of the Anti-SLAPP? And  
4 I would say the answer is yes because that's their only  
5 connection to the case is their constitutionally protected  
6 activity. And there would be no other way to get at it.

7 And, in fact, when you look at the types of  
8 activities that you use to create joint liability, whether it's  
9 Labor Code Section 588.1, it requires personal involvement in  
10 the decision-making. There's some wrongful activity that they  
11 should have done, or there's some inequitable fraud or  
12 injustice if you are doing, you know, piercing the corporate  
13 veil, alter ego. I think that is how it ties into the  
14 Anti-SLAPP because it does arise there.

15 THE COURT: Okay. I just want to make sure I play  
16 this out entirely in my head. So if Company A is making a film  
17 and they bring in Individual B to do something like --  
18 Individual B is not an employee, but they come in or whatever,  
19 and it's like bringing Spielberg in to consult; right?  
20 Individual B comes in and says everyone has to wear this  
21 costume in this scene. Cause of action -- you agree cause of  
22 action lies against Company A, but you are saying Individual B  
23 has an Anti-SLAPP?

24 MR. KANE: Individual B has an Anti-SLAPP  
25 because their only involvement that's alleged is

1 constitutionally protected activity.

2 THE COURT: I see. Because all that Individual B is  
3 doing is creating expression?

4 MR. KANE: Correct.

5 THE COURT: Okay. I understand.

6 MR. KANE: Thank you, Your Honor.

7 The other points that I wanted to bring up have to  
8 do with the motion to dismiss. And, you know, I understand the  
9 Court's decision that it is very early to decide whether or not  
10 Ms. Thoma is a professional actress in this and -- because I  
11 understand it's an affirmative defense. And I ask that the  
12 Court take a look at paragraph 8 of the First Amended Complaint  
13 which says at line 25 on page 4, "In November of 2020, she  
14 signed a contract with defendants known as VXN Media Group with  
15 her entry into the adult" --

16 (Reporter clarification.)

17 MR. KANE: I'm sorry. When I get anxious, I talk  
18 fast.

19 "In November of 2020, she signed a contract with  
20 defendants known as VXN Media Group with her entry into the  
21 adult film industry occurring on or about April 30" -- Let me  
22 try -- "In November 2020, she signed a contract with defendants  
23 known widely as VXN Media Group, with her entry into the adult  
24 film industry occurring on or about April 30, 2021," which is  
25 the, you know, only contract mentioned which is entering her

1 into the adult film industry.

2 And we have cited in our brief the *Wamboldt* case  
3 which has a two-step analysis in order to have the incidental  
4 work be under a different wage order. And my request would be,  
5 number one, that, if you -- since you've given them leave to  
6 amend, if they could address the *Wamboldt* requirements with --  
7 so we know if there's going to be evidence of this.

8 And then we can also have narrowly focused discovery  
9 just on that so we don't have a huge number of subsidiary  
10 issues because we will plan on filing a motion for summary  
11 judgment.

12 The other piece I wanted to mention with regard to  
13 that is both the 9th Circuit and the California courts are  
14 clear on what is a professional. It's somebody who does an  
15 activity for remunerations opposed to a mere pastime. And  
16 that's *First California Bank v. Federal Insurance Company*, 983  
17 F.2d 1076, 9th Circuit, 1992. And that quotes a California  
18 case, *Hollingsworth v. Commercial Insurance Company*, 208  
19 Cal.App.3d 800 at 807, 1998.

20 And the reason why that is significant is this case  
21 is about pay. She's not paid. So clearly she's seeking  
22 remuneration for what she's done on the screen. And she says  
23 that she starred in these films. The only other definition in  
24 wage order 12 is it doesn't define professional actor, is it  
25 defines, you know, what is an extra. And those are people who,

1 you know, passingly appear. I don't think there's any question  
2 that she is an award winning actress, starred in the films, was  
3 seeking pay for it.

4 So the question really in my mind would be going  
5 forward can she meet the *Wamboldt* test because she very likely,  
6 if not compellingly, is a professional actress.

7 THE COURT: I mean, I'm not -- I don't mean to  
8 suggest that I'm disputing what looks like a probable outcome  
9 in the case. What I'm saying is all -- I think all I'm saying  
10 is that at the Complaint stage, just in the four corners of the  
11 Complaint, it's sort of difficult for me to reach that  
12 conclusion.

13 MR. KANE: Thank you, Your Honor.

14 My one ask, if I may --

15 THE COURT: Sure.

16 MR. KANE: -- and you are free to reject it because  
17 you are the Court, is if they could be instructed to address  
18 that issue in the next Complaint so we have notice because my  
19 understanding is we will probably be unlikely to demur again on  
20 this ground. So we need to then probably focus -- or we'll  
21 have a scheduling conference and order figuring out how we are  
22 going to address it further.

23 Thank you, Your Honor.

24 THE COURT: Thank you.

25 Okay. Ms. Cohen?



1 MS. COHEN: Thank you, Your Honor. Good morning and  
2 also happy new year.

3 THE COURT: Happy new year.

4 MS. COHEN: Just to touch on the Anti-SLAPP  
5 issues -- Your Honor, thank you again for the detailed  
6 tentative -- I think the Court has it right, and we've made it  
7 clear in our pleadings that the only activity that was -- it  
8 wasn't -- the only activity was not just the expression of free  
9 speech; right? What underpins these claims is the violation of  
10 the wage and hour laws.

11 Just because it might be triggered or it might  
12 be incidental to it doesn't satisfy the Anti-SLAPP standards.  
13 So --

14 THE COURT: I don't think Mr. Kane would disagree  
15 with you on that. What about this argument that fine, the wage  
16 claims, there's nothing Anti-SLAPP about that. But as to  
17 these, you know, arguably one step removed defendants that were  
18 not her employer, that the individual -- I can't remember the  
19 individual defendant's name who came on and made a wardrobe  
20 choice. Why isn't that protected activity?

21 MS. COHEN: Right. Well, that may be protected  
22 activity, but we have other factors here. So that's, I think,  
23 where the disconnect is, is that we are not only alleging that  
24 Strike 3, Mike Miller, and GMS had involvement in the  
25 production and the dissemination, the advertising of the film.

1 That's undisputed. We've agreed with that.

2 What also happened though was the support for our  
3 joint liability and agency type theories is that all of those  
4 entities, all of those defendants were also involved in  
5 controlling the wages and the working conditions of plaintiff  
6 and the putative class members. So when it comes to  
7 deciding we are going to -- for example, classify them as  
8 independent contractors instead of employees, each defendant  
9 named in the -- in this lawsuit had a direct role in making  
10 that decision.

11 And you know, that's something that I also plan to  
12 touch on in terms of the joint liability arguments to come.  
13 But that's I think what needs to be clear to the Court, is that  
14 the only activity is not just protected activity, the free  
15 speech, the advertising, the dissemination, the creation, the  
16 production by any means. Each party named here, each defendant  
17 named here had a direct role in making a decision as to how we  
18 are going to classify plaintiff and putative class members.  
19 You know, our argument here is they were misclassified as  
20 independent contractors. They should have been employees.

21 In addition to that, decisions were made as to, for  
22 example, what expenses they were going to incur to upkeep  
23 their, you know, personal hygiene, the color of their nails,  
24 the -- how tan they could have their skin. Just down to just  
25 really personal issues were completely controlled.

1           And each defendant had a role in that. They all  
2           worked in tandem with each other to make sure that, you know,  
3           everything was uniform pretty much and how the performers were  
4           going to perform, what they were going to look like on screen,  
5           how they were going to be paid most importantly or not paid.

6           And so I just want the Court to understand that  
7           there's different aspects to this, not just the protected  
8           activity which, again, we are not disputing that exists, but  
9           there's another layer to it.

10           THE COURT: Okay. Understood. Next?

11           MS. COHEN: Yes, Your Honor.

12           So I just would like clarification moving over to  
13           the motion to dismiss -- and I apologize that I have my laptop.  
14           I wasn't able to get to a printer when the tentative came out.

15           THE COURT: No, that's --

16           MS. COHEN: So, Your Honor, I think in the most  
17           respectful way possible, that there might be a confusion as to  
18           our overtime claim and our minimum wage claim. So it looks  
19           like in the tentative, Your Honor, it went by a standard. The  
20           minimum wage claim was analyzed by the Court under a standard  
21           for overtime in terms of plaintiff having to adequately plead  
22           that she worked at least 40 hours -- or more than 40 hours a  
23           week and wasn't paid overtime. And I'm just a little bit  
24           confused because our minimum wage claim is actually based on  
25           the failure to actually pay wages entirely.

1           So there's an example which is paragraph 36 of  
2     Plaintiff's First Amended Complaint where we actually say that  
3     plaintiff and putative class members were never paid, for  
4     example, for time going to fittings. And there's plenty of  
5     other examples in Plaintiff's Complaint that adequately allege  
6     that plaintiff and putative class members performed work that  
7     went entirely unpaid. And this was on days --

8           THE COURT: Can you just list for me the other  
9     paragraphs you are referring to there?

10          MS. COHEN: I was doing my best to get them together  
11     for you before this hearing. I pulled 36 as an example. I do  
12     think it's in that area of Plaintiff's First Amended Complaint.  
13     Let me just scroll if I can find examples.

14          But just off the top of my head, Your Honor, there  
15     was travel time that plaintiff and putative class members had  
16     to do to go and get manicures and pedicures, for example, and  
17     also get bleaching done. They were not paid at all for that  
18     travel time. As you know from the Complaint, Your Honor, there  
19     were actually -- these preparations that they had to make for  
20     personal -- I want to say hygiene, but I think there's another  
21     word for it, but I think you understand what I mean, Your  
22     Honor.

23          They were done on days where there wasn't the flat  
24     rate that was paid for the actual filming or shooting. These  
25     were done on completely off days, maybe a day before, a couple

1 of days before, Your Honor, to actually -- so there's time  
2 that's entirely unpaid which is the basis of our minimum -- one  
3 of the bases of our minimum wage claims.

4 So I just would like further understanding from the  
5 Court as to how that connects with having to allege that  
6 plaintiff and putative class members worked over 40 hours a  
7 week. And we're happy to amend further if that's still  
8 something the Court requires.

9 THE COURT: Let me think about that. I guess the  
10 way I viewed it is that minimum wage requires some sort of  
11 allegation in terms of total hours; right? So if they got  
12 paid -- just a hypothetical, if they get paid a thousand  
13 dollars to do something, if you are saying that they should  
14 have been hourly instead of given that independent contractor  
15 payment amount, there still has to be some allegation in the  
16 Complaint that says the total number of hours they worked  
17 multiplied by minimum wage was greater than a thousand dollars;  
18 right?

19 MS. COHEN: I don't think so, Your Honor. I think,  
20 you know, the big issue here, Your Honor, and why, you know,  
21 respectfully it's not proper to have this analysis at the  
22 pleading stage is because this is mainly going to damages. I  
23 mean, we are dealing with plaintiff and a putative class that  
24 were paid on a flat-rate basis.

25 And to force plaintiff at this stage to actually

1 break down those calculations now looking at, you know, the  
2 entire class period and breaking down specific days where work  
3 was performed, work was not performed, compensated by the  
4 improper flat rate or uncompensated, I think there's an issue  
5 that should be -- that's a factual issue that would be better  
6 developed later down the line once we can do discovery and also  
7 maybe even an issue that better at the damages stage.

8 But I think at the pleading stage, Your Honor, stage  
9 and even with the *Twombly* plausible standard, it's plausible  
10 that minimum wage wasn't paid because we sufficiently alleged  
11 that there was work performed that went entirely unpaid. And  
12 this is on days where the flat rate wasn't being earned,  
13 non-shooting or filming or photograph for the modeling days  
14 completely separate from the shoots, Your Honor.

15 THE COURT: Okay. Thank you.

16 MS. COHEN: And I apologize, Your Honor. Let me  
17 just see what else I have.

18 Right, Your Honor, and so the inaccurate wage  
19 statements, I think what the issue -- I think the issue here  
20 can be resolved. So respectfully, Your Honor, if there's any  
21 possible way that the Court, you know, could give leave to  
22 amend on this, I think I know what the issue is.

23 So first of all, the case that was relied on -- and  
24 I'm trying to find the name. I apologize -- it doesn't  
25 actually require that you give a factual exemplar of an

1 inaccurate wage statement. I think that in that case it was  
2 just a factor of not having a factual exemplar because the  
3 plaintiff in that case had actually alleged that they received  
4 an inaccurate wage statement.

5 Here it's a little bit different. So I don't think  
6 that case would apply in that sense in that because plaintiff  
7 and the putative class members were misclassified, they were  
8 never furnished with wage statements.

9 THE COURT: There were no wage statements.

10 MS. COHEN: No wage statements. So if there's any  
11 way the Court would give leave to amend so that we could  
12 clarify that it's about no wage statements, not inaccurate wage  
13 statements, we are willing to drop that from the Complaint  
14 about inaccurate wage statements. This is about no wage  
15 statements. Labor Code 226 requires employees to receive wage  
16 statements. There were none. How can we prove a negative?  
17 Plaintiff and putative class members never received wage  
18 statements because they were misclassified as independent  
19 contractors.

20 And one suggestion I have, Your Honor, I think what  
21 the issue here is the factual exemplar -- actually that was on  
22 another issue. Just strike that. Sorry, Your Honor.

23 Okay. So moving on from there, the business expense  
24 claim. So here I'm not -- I just need clarification from the  
25 Court as to why the Court is taking the position that plaintiff

1 is required under the law to actually request reimbursement;  
2 right? The law is different. California law states that, if  
3 the employer knew or had reason to know, that, you know, an  
4 employee was incurring business expenses, they have an  
5 obligation to reimburse those business expenses.

6 And as you know already from this case, the  
7 plaintiff and putative class members had very specific  
8 contracts as to how they -- personal grooming. That's the word  
9 I was looking for earlier, Your Honor -- as to what they needed  
10 to do to upkeep their personal grooming in terms of the color  
11 of their nails and piercings, the anal bleaching, for example,  
12 the color of their hair, any plastic surgery. I mean, these  
13 were things that had to be upkeep and done on the terms of all  
14 of the defendants; right?

15 So defendants -- it's reasonable to presume,  
16 Your Honor, that defendants knew that these expenses were being  
17 incurred. And the law doesn't require that plaintiff actually  
18 request reimbursement. And I think, again, this is something  
19 that we can cure by amending the Complaint because I think  
20 where the confusion is is that we state in our First Amended  
21 Complaint that defendants have refused and continue to fail to  
22 refuse to reimburse the business expenses. And so I think  
23 that's maybe giving the impression that plaintiff at one point  
24 requested reimbursement and it was refused. And so I think  
25 that's what's causing the confusion.



1 THE COURT: Well, I don't know that it's confusion.  
2 There is a -- the case that I cite from one of my colleagues  
3 back in 2020 suggests to me the language in the *Ellsworth* case  
4 suggests to me that the plaintiff does have some duty to say  
5 that they sought reimbursement. And the quote is "expected to  
6 allege if he unsuccessfully sought reimbursement for necessary  
7 shoes."

8 And that's sort of part and parcel. I mean, how are  
9 the defendants supposed to be aware of an expense? Granted,  
10 assume for the sake of argument that -- because we are at the  
11 pleading stage, that they knew that the contract required  
12 certain personal grooming. But they don't have any idea how  
13 much it costs each one of those, you know, sessions, you know,  
14 just pick one, costs for the plaintiff to go and have done.  
15 How are they supposed to know how much they are going to  
16 reimburse for or reimbursement the is requested for?

17 MS. COHEN: I appreciate, Your Honor. But I  
18 think -- I haven't had a chance to review the entire case. But  
19 I think in the *Ellsworth* case, I think maybe that there were --  
20 I reviewed it briefly. There were facts there that suggested  
21 that a request for reimbursement was made and then it wasn't  
22 alleged in the Complaint. It was something like that.

23 But I think the bottom line here is that it's -- I  
24 just think that it would be improper to entirely dismiss that  
25 claim at the pleading stage because we do allege that business

1 expenses were incurred. We amended the Complaint to add  
2 specific business expenses with amounts on there; right?

3 And I understand and appreciate the Court's point,  
4 well, how much would defendants know to reimburse? I don't  
5 think that that should be a determining factor of whether the  
6 claim is entirely dismissed or not. I think the main factor to  
7 consider is that it's plausible at the pleading stage that the  
8 defendants knew that these expenses were being incurred. They  
9 see them on the set. I mean, they have to check. Defendants  
10 have to actually check that plaintiff and putative class  
11 members have complied with the personal grooming requirements  
12 before they go on camera whether it's for photographs or  
13 whether it's for videos.

14 So I think that we adequately plead here that  
15 defendants knew or had reason to know that business expenses  
16 were being incurred. And in addition to that, defendants knew  
17 or had reason to know they weren't reimbursing them. I think  
18 defendants are in the best possible position to know whether  
19 they are reimbursing for business expenses.

20 THE COURT: Yes. That I understand, yes.

21 MS. COHEN: Right.

22 THE COURT: Sure.

23 MS. COHEN: But if there's additional detail that  
24 the Court would like, we can work on it. I would just, you  
25 know, respectfully request that we are given leave to amend on

1 that.

2 THE COURT: Okay.

3 MS. COHEN: On that cause of action, Your Honor.

4 Thank you.

5 And I guess my last point to cover would be the  
6 joint liability issues. So going back to when I was  
7 discussing the Anti-SLAPP, Your Honor, we are working on a  
8 plausible standard; right? And so what we have added to the  
9 First Amended Complaint I think brings this just beyond  
10 conclusory allegations.

11 For example, with Mike Miller, we give specific  
12 examples as -- and detail Mike Miller's involvement being  
13 the -- the -- the founder -- one of the co-founders, the  
14 principal, one of the executives. I mean, what we are alleging  
15 here I think makes it clear that Mike Miller is not just, you  
16 know, on set directing, for example. Mike Miller is actually  
17 behind the scenes making decisions with the other defendants as  
18 to how plaintiff and putative class members will be paid and  
19 exactly what's involved in -- in -- in performing; right?

20 And so it's direct control over the -- over the  
21 wages and the working conditions of plaintiff and the putative  
22 class members. And the same goes for Strike 3 as well in terms  
23 of the policies and procedures of the company; right?

24 And again, Your Honor, the main thing here is the  
25 misclassification; right? Strike 3, GMS, Mike Miller, VXN,

1 they all worked at one to say right, this is going to be the  
2 nature of our business. This is how we are paying our  
3 employees. This is how they are going to perform. This is how  
4 they are going to look on set. It's everyone making the  
5 decision together. And I think that the First Amended  
6 Complaint adequately pleads that in terms of breaking down each  
7 defendant's involvement.

8 THE COURT: Well, okay. So leaving aside Mr. Miller  
9 who I think I understand what you mean in terms of his personal  
10 involvement in those decisions, what did Strike 3 as an entity  
11 do with respect to those decisions that you are talking about  
12 right now?

13 MS. COHEN: So I believe that Strike 3 was the --  
14 not only the copyright holder, Your Honor, but also was  
15 involved in the development of the film as well. And I'd say,  
16 you know --

17 THE COURT: What does that mean, the development of  
18 the film?

19 MS. COHEN: Well, in making decisions as to the  
20 production; right? When are we going to release it. How are  
21 we going to release it.

22 And again, Your Honor, there's -- I wanted to pull  
23 it up for you, Your Honor, but at this stage, at the pleading  
24 stage, it's -- I just -- it's defendants that are going to be  
25 in possession of this information; right? So Plaintiff's

1 Complaint alleges that in a nutshell they worked as one, they  
2 worked in tandem, they all had direct control over the wages  
3 and working conditions of plaintiff and the putative class;  
4 right?

5 But I think anything deeper and further into that,  
6 that's something that's more proper for once we -- to develop  
7 once we've had a chance to conduct discovery; right? It's  
8 unlikely that any plaintiff or putative class members are going  
9 to have that information. That's something that we need to  
10 discover through the discovery process which we have been  
11 trying for a while to get to, Your Honor, but are faced with  
12 these motions which, you know, that's just litigation,  
13 Your Honor.

14 But, you know, I think what the Court might be  
15 looking for is something that's proper past the pleading stage.  
16 I think what we've pled --

17 THE COURT: Maybe. But also maybe not. I mean,  
18 because the same would be true if I dismiss Strike 3 now and  
19 there's discovery as to Mr. Miller and to the surviving  
20 defendant that shows that Strike 3 made some specific decision.  
21 You know, there's an -- you know, you find in an e-mail where  
22 Strike 3 says these people are all independent contractors.  
23 They are never to be classified as wage earners. You could  
24 presumably then amend because now you have -- now you have the  
25 evidence to make the allegation.

1 I think that there -- to me there has to be  
2 something a little more concrete even at this stage as to what  
3 Strike 3 did specifically, what decision did Strike 3 make,  
4 what decree or resolution or order did Strike 3 make that, you  
5 know, brings them into the purview of the lawsuit.

6 MS. COHEN: Right. And we do have that in our First  
7 Amended Complaint, Your Honor. And we did add details. I'm  
8 just trying to get to it for you. I believe it's --

9 THE COURT: Take your time. Just tell me what the  
10 paragraph number is.

11 MS. COHEN: Yes. It starts at 9 and moving down.  
12 So we go through -- at paragraph 10 we go through VXN Media  
13 Group and describe their involvement. Moving down to 14, we  
14 cover General Media, and I think we are getting to Strike 3.  
15 Under joint liability maybe? I apologize, Your Honor, that I  
16 didn't have this ready for you.

17 THE COURT: Okay.

18 MS. COHEN: I apologize, Your Honor. I don't want  
19 to keep the Court waiting. But I think, you know, my main  
20 point Your Honor, is that what we have alleged in the Complaint  
21 as to how Strike 3, Miller, GMS, and VXN all have pretty much  
22 acted as one all together behind the scenes to actually decide  
23 how the wages and the working conditions have direct control  
24 over the wages and working conditions that we've met the  
25 pleading standard.

1           And we did cite case law that states -- and I'm  
2     trying to switch over between my documents to find it for  
3     you -- which supports the notion that allegations that need  
4     further factual development are not proper for dismissal. And  
5     something like the connection between these defendants, which  
6     is kept pretty secretive, is something that's -- needs further  
7     factual development.

8           And, you know, plaintiff and putative class members,  
9     they have the right to conduct discovery as to how everything  
10    was working behind the scenes. But for pleadings standard  
11    purposes, Your Honor, we -- we plead facts to support that the  
12    joint employer allegations and the alter ego allegations. It's  
13    just -- it's a prime example of something that's pretty much  
14    mainly in defendants' knowledge and suitable for further  
15    factual development.

16           Thank you.

17           THE COURT: Okay.

18           MS. COHEN: I think I covered everything.

19           THE COURT: Okay. Thank you very much.

20           MS. COHEN: Thank you, Your Honor.

21           THE COURT: Mr. Kane?

22           MR. KANE: Yes. Thank you.

23           First off, you know, one of the problems with this  
24    case are the pleadings, and as we initially discussed, many of  
25    them are boilerplate, and it's hard to understand which is why

1 we made these motions.

2 And, you know, my understanding from the Complaint  
3 is they were paid by the job; right? That's pretty clear. And  
4 now it's changing into some other arrangement which, if you  
5 allow them to amend, we are going to challenge as a sham  
6 pleading because it's the same thing with the exemplars. Well,  
7 you didn't give it to us, they weren't accurate, but now we  
8 lost, so now we want to change our theory again. And I think  
9 the Court's tentative should stand as is.

10 And I will just go back to in closing, the things  
11 that plaintiff's counsel has pointed to are all the things that  
12 are the constitutionally protected activities, but none of it  
13 says -- like, for example, Mike Miller. Well, he was involved  
14 with creating policies and procedures. What does that mean?  
15 They don't allege he did anything wrong. They don't allege  
16 that he did this.

17 So I think the Court's tentative should stand, and I  
18 think we should narrowly focus the case on the issue of whether  
19 or not Wage Order 12 applies. And if Wage Order 12 does not  
20 apply, then we can address some of these other issues. But  
21 otherwise it's going to spiral because in the state court  
22 actions -- they had two: The one you remanded. They filed a  
23 PAGA action. We got them related and the judge, Judge Kuhl,  
24 stayed that case, both of them. Took everything off calendar  
25 and said we are going to, as a matter of comity, follow this



1 Court's lead. And so we will be reporting back.

2 So if we can narrowly focus what we are doing, I  
3 think we can get through this much quicker. Their proposal is  
4 let's make everything and make it as expensive as possible for  
5 the defendants who have done nothing wrong, and there's no  
6 indication that they wouldn't have ability to pay --

7 THE COURT: I don't think Ms. Cohen agrees with you  
8 about they've done nothing wrong.

9 MR. KANE: She is a worthy opponent, and we  
10 vehemently disagree on the facts and the law. Thank you.

11 THE COURT: Okay. All right. The matter is taken  
12 under submission.

13 Ms. Cohen, I'm going to order you to within a week  
14 from today, please file a redlined copy of the Complaint as  
15 against the First Amended Complaint so that I can see clearly  
16 the changes that were made between the two.

17 We've done one by hand, but I'm not 100 percent  
18 confident in its accuracy. So if you could file one, that  
19 would be appreciated.

20 MS. COHEN: Of course, Your Honor. I apologize that  
21 an attempt to do it by hand, anyone had to go through that. A  
22 simple contact to us we would have had a redlined Complaint  
23 with the Court within ten minutes.

24 THE COURT: No problem.

25 MS. COHEN: Maybe less.

1 THE COURT: All right. Please file that by next  
2 Friday so we can look at that before we issue the order. Okay?

3 MS. COHEN: Thank you, Your Honor.

4 MR. KANE: Thank you, Your Honor.

5 MR. CLOPPER: Thank you, Your Honor.

6 THE COURTROOM DEPUTY: All rise.

7 (At 10:39 a.m. the proceedings adjourned.)  
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